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REPORT

postcare 2.0

Informing the Care Services Workers on Posting Rules



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REPORT

of the Online Info Centres' Activities

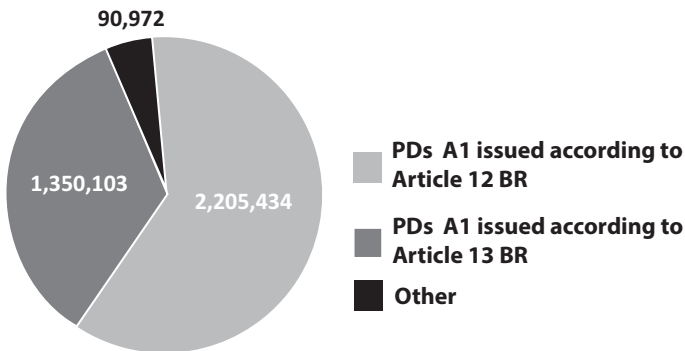
1. Introduction

As J.-J. Rousseau once famously stated, when travelling from Paris to Marseille, you had to change legislation more than you have to change horses. The EU's internal market's¹ objective is indeed that - to eliminate obstacles hindering this freedom of movement. This includes also freedom to provide services², and one of its forms - posting of workers. It relies on a wide set of EU-level rules both at the level of primary and secondary law³.

Posting of workers combines (national and European) labour law, social security law, tax law as well as various provisions pertaining to other branches of law. It needs to be emphasised that differences exist in the definition of a '*posted person*' as under the Social Security Coordination Regulations (i.e., 'Basic' Regulation 883/2004/EC on the coordination of social security systems ['**BR**'], and its 'Implementing' Regulation 987/2009/EC ['**IR**'])⁴ compared to a '*posted worker*' as defined by the Posting of Workers Directive (i.e., Directive 96/71/EC recently amended by Directive 2018/957/EU⁵). Consequently, persons might be 'posted' under the Coordination Regulations (i.e., determining which national social security system is applicable to the posted worker) but not in the meaning of the Posting of Workers Directive ('PWD')⁶.

In cases of cross-border postings, Portable Documents A1 ('PDs A1') are relied on to indicate the social security system that applies to a worker who is being posted. The Figure 1 shows a total number of such certificates issued according to respective legal bases in 2021 (latest available data):

Infographic 1 – Total number of PDs A1 issued in 2021 in the EU, breakdown by type



1 Art. 26 ust. 2 Treaty on the functioning of the EU (TFEU).

2 Y. Jorens, *Cross-border EU Employment and its Enforcement. An Analysis of the Labour and Social Security Law Aspects and Quest for Solutions*, Springer 2022, p. 1.

3 Z. Rasnaca, *Identifying the (dis)placement of 'new' Member State social interests in the posting of workers: the case of Latvia*, *ECLRev*, 14, 2018, p. 133.

4 See BR: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02004R0883-20140101> and IR: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02009R0987-20180101>

5 See: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01996L0071-20200730>

6 For more see: F. De Wispelaere, L. De Smedt & J. Pacolet, (2022), *Posted workers in the European Union. Facts and figures*, Leuven: POSTING.STAT project VS/2020/0499, p. 9 et seq.

Source: F. De Wispelaere, L. De Smedt & J. Pacolet, *Posting of workers. Report on A1 Portable Documents issued in 2021*, Brussels 2022

Among posted workers, in turn, that is persons sent to carry out work for an entrepreneur in one Member State to another Member State, a growing number are live-in caregivers⁷ - sometimes referred to by the media as “true angels” (Deutschlandfunk, 2016) or »silent heroines« (Kurier, 2018).

The present **Report on the Online Info Centres’ (‘OICs’) Activities** operating within the POSTCARE 2.0 Grant Project⁸ is aimed at taking stock of operations of respective Partner OICs.

2. Major legal and practical aspects of posting of workers in live-in care sector

The population of Europe is aging drastically, which makes the demand for care to the elderly the order of the day⁹. Live-in caregivers are paid professionals, whose work primarily involves provision of care while living in a private residence with the care receiver (recipient)¹⁰. The very sector consists in large part of circular workers from Central and Eastern Europe (a fact which is also reflected in takeaways from the OICs national Reports herein). The formal long-term care (LTC) sector has 6.3 million workers in the EU (up to 3.2% of the entire EU workforce), while the informal one is estimated to count up to 40-50 million workers¹¹.

As the research demonstrates, an increasingly important part of live-in care in the EU is played by third-country nationals (‘TCNs’) being posted abroad to provide such care. Some researchers (rightly) claim that households perceive migrants’ (and posted workers’) services as a replacement for family-provided care¹². This type of care is mostly provided on a live-in basis: caregiver(s) live with a care recipient. Research on ‘migrant¹³ in the family care’ in Germany (largest receiver of live-in care in the EU / EEA area¹⁴) has shown that even when workers do not live within the care receiver’s household, *‘they are always nearby and able to help quickly if difficulties emerge’*¹⁵. Although some live-in migrant caregivers have

7 Concept explained below in Part 2 hereof.

8 For more on POSTCARE 2.0, see its website at: <http://federacijaprzedsiebiorcow-internationalprojects.eu/postcare-2-0/>

9 According to the German Federal Ministry of Health, around 4.6 million people needed elderly care by the end of 2020; by 2050 this number could grow to 7.25 million – K. Wakula, *Überprüfung von Pflegeunternehmen, Arbeit und Arbeitsrecht* 2023/12.

10 Eurofound, *Long-term care workforce: Employment and working conditions. Luxembourg 2020*. See also M. Kielbasa, *Postcare. Posting of third-country nationals in care services. Country Report Poland 2022 (within the POSTCARE 1.0 Grant Project)*: <http://futurepostcare.com/downloads#toggle-id-8>

11 M. Barslund, F. De Wispelaere, K. Lenaerts, W. Schepers, E. Fries-Tersch, *Policies for long-term carers. Luxembourg: Committee on Employment and Social Affairs, EP 2021*.

12 Cf. P. Kniejska, *Migrant Care Workers aus Polen in der häuslichen Pflege: Zwischen familiärer Nähe und beruflicher Distanz*, Wiesbaden 2016, p. 84 et seq. See also: M. Kielbasa, *Postcare. (...) Country Report Poland 2022*, op. cit.

13 *Posted workers are very often confused with migrant workers - whereas the latter are persons crossing borders on different legal bases – Art. 56 et seq. vs. Art. 45 et seq. TFEU*.

14 M. Kielbasa, *The Poland Report: Recommendations and Solutions, POSTCARE 2.0 Informing the Care Services Workers on Posting Rules, 2023*, p. 2-3.

15 P. Kniejska, *In between-carer: towards a new type of elder care worker? The example of Polish migrant care workers in Germany’*, *IJCC 2018*, 2(4): 477-98, p. 477.

experience or training in nursing or care, the large majority does not have ad hoc formal qualifications¹⁶. Such caregivers were also referred to the most important ‘therapeutic medicine’ for older people¹⁷.

According to the current provisions, when posted they are entitled to terms and conditions of employment (in particular concerning ‘remuneration’ - of the receiving Member State – Art. 3(1) Directive 96/71, as amended by Directive 2018/957). Pursuant to the latter Directive, when the effective duration of a posting exceeds 12 months, all the applicable terms and conditions of employment which are laid down in the receiving Member State shall apply on top of the above-mentioned Art. 3(1) terms and conditions.

When relevant conditions are fulfilled, A PD A1 certificate may also be issued to a posted caregiver, proving that they have no obligations to pay social security contributions in another (receiving Member State). However, when it comes to a TCN caregiver, they need to be legally resident in the territory of a Member State and be in a situation which is not confined in all respects within a single Member State (Art. 1 Regulation 1231/2010).

3. Activities of the national consultants – challenges and Priority Areas

This part underscores key operational structures and identifies common issues demanding immediate attention in each Partner country concerned. For the sake of clarity, we put the very countries in alphabetical order.

Greece

According to the latest available data, there were 9251 PDs A1 issued in Greece in 2018¹⁸. One could then say the phenomenon of posting of workers is of modest dimensions there (however, the number has grown from 1,889 PDs A1 in 2012¹⁹). This has been somehow reflected in the reality of Greece’s OICs, especially in the approach of the general public thereto. They have been managed by a team of professionals through a dedicated website, enabling direct contact with experts regarding posted work. Despite robust expertise, the Centres faced challenges requiring prompt resolution. Major ones were:

- Difficulty in comprehending intricate labour laws of receiving Member States (especially disparities concerning contracts, working hours, and leave policies in cross-border situations causes confusion, leaving individuals uncertain about their rights and obligations.
- Complexity in managing social security contributions across home and host Member States.
- Concerns arose over wage gaps between posted workers and locals, leading to anxieties about fair compensation. This issue has become a central point of contention, raised as a critical issue by multiple individuals. It could have been influenced by the fact that Greece average annual net earnings for EU and EEA countries comparisons place Greece in

¹⁶ M. Kielbasa, *Postcare. (...) Country Report Poland 2022*, op. cit.

¹⁷ P. Kniejska, (2018) *In between-carer*, op. cit., p. 489.

¹⁸ F. De Wispelaere, L. De Smedt & J. Pacolet, *Posting of workers*, op. cit., p. 20.

¹⁹ F. De Wispelaere, L. De Smedt & J. Pacolet, *Posting of workers*, op. cit., p. 24.

the lower echelons of the Member States concerned²⁰.

Therefore, these are Priority Areas stemming from the operation of the Greek Centres:

Priority 1: Labour law understanding and harmonization

- Clarification and simplification of labour laws across Member States to ensure comprehension and adherence.
- Standardized guidelines for contracts, working hours, and leave policies to mitigate confusion and uncertainty.

Priority 2: social security management framework

- Developing a comprehensive framework to assist in navigating and managing social security contributions in both home and host Member States, as well as guidance and support mechanisms to facilitate access to social benefits and retirement plans.

Priority 3: Equitable employment conditions

- Addressing wage differentials and establishing policies ensuring fair compensation for posted workers as well as measures guaranteeing equitable working hours, breaks, and a conducive workplace environment.

Addressing these Priorities would significantly improve the functionality and effectiveness of support provided to individuals by the Online Information Centres and the situation of posted workers making use thereof.

Lithuania

Posting of workers in Lithuania has been steadfastly and swiftly gaining ground, as can be clearly inferred from the number of PDs A1 issued. In 2012 there were 14,041 of them, while in 2021 that figure rose to a whopping 110,641²¹, a huge number given the population of the country. Majority were issued in transportation and services' sectors which was reflected in inquiries directed to the Lithuanian OIC, which however also had questions from nurse/care workers, mostly Lithuanian citizens employed in care and nursing homes. The OIC in Vilnius, hosted at the LTU "Solidarumas" headquarters, established a hotline to assist individuals seeking guidance on labour-related queries, which proved a good idea. The advice sought concerned various work-related issues, including working conditions, trade union setup, and opportunities in other countries like Norway and Germany.

The major issues which were legal work and posting procedures: Regarding legal employment in Lithuania, temporary residence permits for extended stays and specific rules for foreigners changing employers or job functions were highlighted. Compliance with posting regulations for workers from foreign companies was emphasized, too.

One significant challenge is the shortage of (3,000!) nurses and care assistants in Lithuania,

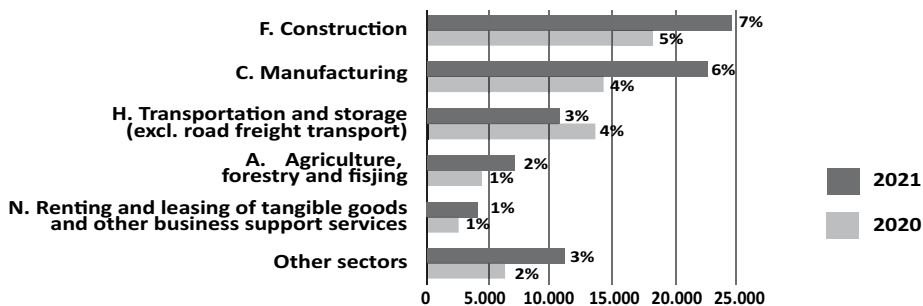
²⁰ I. Lahiri, *Which European countries have the highest and lowest salaries?*, *Euronews.business*, 24.11.2023.

²¹ F. De Wispelaere, L. De Smedt & J. Pacolet, *Posting of workers*, *op. cit.*, p. 24.

aggravated by impending long-term care reforms. Funding inadequacies pose a consistent hurdle. Additionally, the legal responsibilities of Lithuanian companies hosting third-country nationals for temporary work were detailed, stressing the importance of proper documentation to avoid penalties for illegal employment.

Priority Areas stemming from the operation of the Lithuanian Centre:

Priority 1: Labour law understanding and support



- Addressing violations of the Labour Code through enhanced guidance and support for nurses /care workers
- Providing comprehensive information on working conditions, trade union setup, and employment opportunities abroad, especially in the (health)care sector.

Priority 2: Clarity in legal procedures

- Simplifying the process for obtaining permits and residence documents for TCNs intending to work in Lithuania for different durations (especially in live-in care) and ensuring adequate consultations with the Migration Department to avoid illegal employment during job changes or shifts in employer roles.

Addressing these priorities would greatly improve the effectiveness of the OIC as well as more effective a support for various workers in navigating complex legalities and improving working conditions in Lithuania and abroad²².

The Netherlands

The Netherlands had always been one of the main receiving Member States of posted workers within the EU. It is estimated that between 207,000 and 605,000 PDs A1 were issued to the Netherlands between 2018 and 2020. Since the introduction of the prior notification

²² See also: D. Petrylaitė, V. Petrylaitė, *The Legal System of Posting of Workers in Lithuania, Variazioni su Temi di Diritto del Lavoro, Fasc. 1 – 2021*.

tool (*Meldloket WagwEU*), e.g. 375,000 incoming posted workers were notified in 2021²³. Among them, workers posted in the live-in care sector constituted only a fractional share, as evidenced by the table below:

Infographic 2. Workers notified by top 5 sectors of employment, excluding road freight transport

Source: A. Heyma, H. Bussink & T. Vervliet, *Posted Workers to the Netherlands. Facts and figures*, Leuven 2022: POSTING.STAT project VS/2020/0499, p. 29.

The Dutch OIC within the framework of POSTCARE 2.0 was developed with the primary objective of providing information related to posting workers in the Netherlands and included a website which was set up purposefully for the Grant, offering extensive resources.

Major take-aways and challenges in the operation of the Dutch OIC included:

Certain misalignment of queries:

- Feedback predominantly consisted of queries on labour conditions and rights violations, often unrelated to posting, including contract problems, working without contracts, salary discrepancies, and extended working hours. On the other hand, workers might not recognize themselves as posted, reaching out to general labour rights advocates instead of the OIC.

Competition with other portals offering substantive information and advice:

Existence of multiple other portals in the Netherlands providing information to posted workers, might divert inquiries from the OIC dedicated to posting of workers. At the same time, the nature of the Dutch Partner's activities against human trafficking may have attracted inquiries more related to severe labour exploitation than posting issues.

Apart from the above, the Dutch Partner carried out two Information Labs. The discussions therein focused on improving information dissemination and strengthening worker rights' awareness. These takeaways from the discussion substantively fed into the effects of the operation of the Dutch OIC.

The major challenges in enforcing rights, identified by the OIC included difficulties in establishing the legal status of workers, hampering effective enforcement of their rights by authorities and NGOs.

Therefore, these are Priority Areas stemming from the operation of the Dutch Centre.

Priority 1: Clarifying posting situations and rights awareness

Develop strategies to inform and educate workers about their posted status and associated legal frameworks and collaborate with stakeholders to enhance awareness and understanding of posted workers' rights and obligations.

Priority 2: Streamlining information outreach

²³ A. Heyma, H. Bussink & T. Vervliet, *Posted Workers to the Netherlands. Facts and figures*, op. cit., p. 29.

Make use of a website with information and contacts that do not involve the government, as this might scare people from reaching out plus strategize ways to differentiate the OIC from existing portals and collaborate with authorities and NGOs.

Addressing these priorities would strengthen the OIC's role in supporting posted workers, fostering better awareness, and ensuring access to crucial information, ultimately empowering workers and safeguarding their rights in the Netherlands, but also when posted abroad²⁴.

Poland

Poland is the second most important posting EU Member State, as consistently evidence in EU-wide research²⁵. It is also a major country posting live-in caregivers, as evidenced in the infographic below (which also explained the largest amount of questions directed to its OIC).

Infographic 3. Number and share of PDs A1 issued in 2021

Sector of activity	Total issued in 2021 [under Art. 12 + Art. 13 BR]	PDs A1 issued to TCNs		PDs A1 issued to Ukrainians		PDs A1 issued to EU nationals (incl. PL citizens)	
		No.	Share in total	No.	Share in total	No.	Share in total PDs A1
Human health and social work activities (PKD Q)	74,876	2,025		1,836			
	[17,953	1,091	2.7%	[1,023	2.4 %	72,851	97.3%
	+ 56,833]	+ 934		+ 813]			

Source: own calculations based on data from ZUS + M. Kiełbasa, M. Szaraniec, M. Mędrala & M. Benio, *Posted Workers from and to Poland. Facts and Figures*, Leuven 2022, p. 111.

The OIC of the European Labour Mobility Institute (ELMI) commenced its operations in January 2023. The website (<https://labourinstitute.eu/postcare2/>) was designed to cater to queries about cross-border posting of live-in care workers, especially from and concerning third countries. The Centre aimed for comprehensive accessibility through multiple channels.

Numerous enquiries received and challenges may be categorised as follows:

Enquiry categories:

- Posting of TCN caregivers

²⁴ See also: A. Heyma, H. Bussink & T. Vervliet, *Posted Workers to the Netherlands*, op. cit., p. 44 et seq.

²⁵ F. De Wispelaere, L. De Smedt & J. Pacolet, *Posting of workers*, op. cit., p. 18.

- EU Social Security Coordination principles
- Labour law provisions concerning the PWD
- Legal framework for Polish caregivers posted abroad, notably to Germany

Information accessibility challenges:

- Challenges stemmed from inadequate information access.
- Regulatory requirements favour official national websites, but a multitude of channels (e.g. 182 across 5 Member States pursuant to one latest study²⁶) is used in practice

ELMI’s OIC enquiry examples - a variety of questions, e.g.:

- Prior employment requirements for caregivers before posting to Germany
- Contractual, legal, and practical concerns regarding Polish caregivers working in Germany
- Notifications to host Member States

Identified priorities for addressing:

Priority 1: Enhancing information access

- Develop strategies to simplify and centralize access to pertinent information for posted workers and employers
- Collaborate with diverse entities to streamline information channels.

Priority 2: clarifying legal frameworks

Provide comprehensive guidance on legal frameworks, social security coordination, and labour law provisions for posted live-in caregivers and host discussions and meetings to consolidate information

Priority 3: Lack of political will and turning a blind eye to black market of live-in care (which is the case in postings to Germany) should be challenged and changed.

The OIC served as a pivotal resource addressing the complexities and challenges faced by workers posted the live-in care sector.

Serbia

The Serbian OIC, hosted on the Health and Social Care Workers’ Union of Serbia’s website, aimed to cater to queries concerning workers referred to third countries. To raise awareness,

²⁶ Cf. F. De Wispelaere, L. De Smedt, *Access to information on the posting of workers: Are we blinded by the importance given by EU legislation to the single official national website?* ECSWPR Policy Brief 2023/5, p. 5.

a workshop was organized, prompting a surge in inquiries.

A resume of the Enquiries and Responses:

- Queries included inquiries on employee status in an agency, entitlement to days off, and seeking rights information for work in Slovenia.
- Other queries covered concerns about worker guarantees for minimum working conditions, overtime limits, and workers' voluntary stay extension.
- Other questions involved job applications, EU directive application for non-EU posted workers. The following challenges to be addressed were raised:
 - Legal clarity and support - queries focused on legal nuances, rights, and conditions for posted workers in third countries, minimum wages, taxation, family reunification necessitating clarity in legal frameworks.
 - Differentiating between posted workers and labour migrants was a recurring query, highlighting the need for clear definitions and explanations.

Therefore, Priority Areas stemming from the operation of the Serbian OIC:

Priority 1: Enhanced Legal Guidance

Clarify legal frameworks for posted workers, including rights, obligations, taxation, stay extensions and legal standing after the maximum posting duration.

Priority 2: Workers' rights education

Focus on educating workers about their rights in different countries

Priority 3: Differentiating worker types

Provide clear explanations differentiating between posted workers and labour migrants

The OIC has played a crucial role in providing guidance and answering queries for workers seeking employment in third countries. The inquiries received underscore the need for enhanced legal clarity, better education about workers' rights, and differentiation between various worker types to provide effective support and guidance for workers navigating cross-border employment.

Spain

Spain is one of the main sending Member States of posted workers in the EU. In 2019, prior to the COVID-19 pandemic, it was ranked third among all EU/EFTA countries, only surpassed by Germany and Poland²⁷.

The Spanish Partner aimed to address the challenges faced by caregivers from third countries and the evolving landscape of live-in care in Europe.

²⁷ M.D. Carrascosa, M.D. & Ó. Contreras, (2022), *Posted workers from and to Spain. Facts and figures*, Leuven: POSTING.STAT project VS/2020/0499, p. 6.

Major objectives included:

- Sensitization and raising awareness among employers about their obligations and informing caregivers about their rights. Information requests were collected through an email address distributed via press releases and various social media platforms.

- Even though information requests received was limited, they provided insights into the challenges faced by posted workers and their employers, mainly individuals hiring caregivers for their families.

- Findings of the OIC and Challenges:

- Only 15% of the queries came from workers affected by the Posting of Workers Directive, seeking information about labour rights and conditions in Spain or other European countries. The majority (85%) pertained to work not covered by such arrangements, with a focus on caregiving in family environments.

- A focus group revealed that caregivers, predominantly from Latin American countries, engaged in combined care and household tasks, lacking formal qualifications for caregiving. Many resided with the families they worked for, showing limited knowledge about their contracts or collective agreements.

- Both employers and workers demonstrated a lack of understanding regarding applicable labour regulations, social security, and employment conditions.

- Conclusions and expert assessment:

- Workers in residential centres had regulated employment conditions and qualifications, contrasting with those in live-in care, lacking formal titles or clear labour categories

- Live-in caregivers mainly comprised immigrants from Latin America and some European countries, often lacking formal qualifications or clear contractual agreements

- Spanish Caritas and the Catholic Church played an important role in providing information, counselling and qualifications for foreign caregivers.

The Report identified significant knowledge gaps, challenges in caregiving standards, and disparities in employment conditions and qualifications among caregivers, emphasizing the need for clearer regulations, improved awareness, and standards for live-in care in Spain.

4. Summary

As evidenced above, respective Partners' OICs Reports, which laid foundations for this Report, vary when it comes to e.g. persons who made the contact with the respective Centres, nature of the queries, as well as and some of the identified challenges. However, herein, we highlight the following shared challenges across Partner countries.

- Little awareness about the obligation to apply selected areas of the working conditions of the receiving Member State during the posting period, resulting from plethora of legal sources which are potentially applicable.
- Practical difficulties in work time record when care is provided in the place of living were reported as the most conflict issue between caregiver and care service provider.
- Unclear legal status of Third-Country Nationals in the receiving Member State, especially regarding their right to entry and residence during the posting period (issue of the so-called 'Vander Elst visa' in Germany).
- A website with information and contacts that do not involve the government might induce people into reaching out.
- Lack of political will and turning a blind eye to black market of live-in care is still the case, yet it should be challenged and changed.



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